IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

WP(C).No. 35451 of 2005(U)

PETITIONER:

M.V. FAIZAL, AGED 31 YEARS,
S/O. KAMMU, MELEVILAKKATTU PARAMBU,
P.O. KOODARANJI, KOZHIKODE DIST.

BY ADV. SRI.A.F.SEBASTIAN

RESPONDENTS:

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1. THE SECRETARY,
CALICUT ISLAMIC RESIDENTIAL HIGH SCHOOL,
FARHAN HILLS, MATHARA,P.O. GURUVAYOORAPPAN COLLEGE
KOZHIKODE.

2. THE PRINCIPAL,
CALICUT ISLAMIC RESIDENTIAL HIGH SCHOOL,
FARHAN HILLS, MATHARA,P.O. GURUVAYOORAPPAN COLLEGE
KOZHIKODE.

3. THE LABOUR COURT, KOZHIKODE.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/10/2007, ALONG WITH WPC NO. 12615 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1: COPY OF THE AWARD DATED 6/7/2005 IN I.D.NO.5 OF 2002 PASSED BY THE HON'BLE LABOUR COURT, KOZHIKODE.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)Nos.35451 of 2005 &
12615 OF 2006

Dated this the 23rd day of October, 2007

JUDGMENT

These two writ petitions are filed challenging the award in I.D.No.5/2002 passed by the Labour Court, Kozhikode, the former by the workman involved in the Industrial Dispute and the latter by the management. The issue referred for adjudication by the Labour Court was;

> "Whether the denial of employment to Sri. M.V. Faizal, Driver w.e.f 12.6.2001 is justifiable? If not, what relief he is entitled to?

2. The Labour Court found that the workman was denied employment unjustly, but instead of ordering reinstatement, directed the management to pay compensation amounting to Rs.30,000/- in full and final settlement of the employment benefits payable to the workman by the management. The management is challenging the finding that the workman was denied employment unjustly and the workman is challenging that

part of the award restricting relief to compensation instead of reinstatement.

3. The contention of the management is that the workman was not a regular employee of the management but only the contract employee employed by the contractor who was engaged for running the School bus. According to the workman, after finding that the workman is liable to be reinstated in service, the Labour Court ought not have confined relief to payment of compensation. Therefore the workman seeks direction to the management to reinstate the workman in service.

4. Before going into the merits of the rival contentions, I must remind myself of my limitations in interfering with the finding of fact entered by Labour Courts and Industrial Tribunals. It is settled law that the findings of fact entered by the Labour Courts or Industrial Tribunals can be interfered with by this Court only if there was no evidence to support the findings or the findings are perverse. In this case, the Tribunal, on the basis of evidence before it, came to the conclusion that the workman was employed by the management themselves and not by the contractor and he was

denied employment without any reason with effect from 31.5.2001.

5. The Labour Court had considered the evidence before it elaborately and has given very cogent reasoning for the conclusion arrived at in the award. I find that such conclusions are based on reliable evidence and that the findings cannot in any way be termed as perverse. As such, I am not inclined to unsettle the findings of fact entered by the Labour Court to the effect that the workman was an employee of the management and that he was denied employment with effect from 31.5.2001 without any reason.

6. The next question is as to whether the Labour Court was justified in limiting the compensation amounting to Rs.30,000/- instead of directing the reinstatement of the workman in service. The management is a Society registered under the Societies Registration Act. Before the Labour Court they had produced and proved Ext.M3 Constitution and Rules of Calicut Islamic Cultural Society, which is the management. A copy of the same was made available to me by the learned counsel for the management. It shows that the aims and objects of the Society is to function for educational, social and

economic upliftment of the people in all possible ways especially for rehabilitation of socially handicapped and economically poor sections of the Society. The Society is to work for establishment and maintenance of educational institutions, training centres and workshops. The Society is to start destitute homes, hostels, schools, hospitals and other institutions. The Society is to undertake the development of Khadi and Village Industries programmes for the welfare of the people and to receive financial assistance from Khadi and Village Industries Board and commission for implementation of such schemes. The society is also to undertake all programmes for the welfare of all sections of disabled persons like physically handicapped and mentally retarded by establishing educational institutions, Rehabilitation Centres, Homes, Hostels, Hospitals, Workshops, Vocational Training Centers, Industries etc. Another object of the society is to undertake all programmes for the welfare of women like educational institutions, hostels, homes, vocational training cent res, Hospitals, Industries etc.

7. The management has adduced some evidence to show that they had sold the vehicle in which the workman was

a driver. Although the Labour Court had adverted to the evidence in this regard the reliability of that evidence has not been specifically gone into in so far as the Labour Court found that the sale of the vehicle was after the workman left the service of the management. It was also contended before the Labour Court by the management that the workman prosecuted the litigation on the instigation of some rival members of the school managing committee. The Labour Court came to the finding that the relationship between the management and the workman appears to be strained.

8. In view of the above circumstances, I cannot come to the finding that the decision of the Labour Court to award compensation in lieu of reinstatement can be faulted. However I feel that the compensation fixed as Rs.30,000/- is on the lower side. I am inclined to enhance the same to Rs.50,000/- . Accordingly, by confirming the finding of the Labour Court that the management had unjustly denied the employment to the workman, I modify that part of the award fixing compensation at Rs.30,000/- and direct the management to pay Rs.50,000/- as compensation to the workman. In all other respects Ext.P1 award in both writ

petitions would stand.

The writ petitions are disposed of as above.

S. SIRI JAGAN, JUDGE

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